



Housing and Community Development

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MEMORANDUM

TO: Mayor Tom Truex

FROM: Shirley Taylor-Prakelt, Director

SUBJECT: Condominium Conversions - Proposed Moratorium

DATE: March 1, 2006

Thank you for raising the issue at the February 15th Town Council Meeting, regarding the negative affects of Condo Conversions. This phenomenon is causing the displacement of Davie renters, most of whom can not afford to purchase their units when converted. Regrettably, many of these renters have pets and/or poor credit, making it extremely difficult to find comparable replacement housing for them.

Hurricane Wilma destroyed over 960 mobile homes in Davie; and, many of these residents have subsequently been placed in lower-cost rental units. Thus, the rental vacancy rate is very low; and, many landlords are capitalizing on the demand for units by raising their rents.

The following is a list of apartment complexes that have notified the Town of their intent to convert to Condos. If they all move forward with this process, 789 households/families will be displaced.

- Courtyards at Davie a/k/a Davie Crossings, 6920 SW 39th Street - 219 Units
- Sundance Apartments, a/k/a/ Cedar Key, 2867 So. University Drive - 180 Units
- Westview Apartments, 5060 Davie Road - 42 Units
- Gardens at Nova, 6857 College Court - 140 Units
- Poinciana Lakes Apartments, 2600 So. University Drive - 208 Units

I consulted Broward County's Housing Office on a possible moratorium on condo conversions; and, they shared with me a legal opinion issued by County Attorney Jeffrey J. Newton, rendered on February 16, 2006, (a copy of which is attached for your perusal). In that case, he was asked to determine whether the County could adopt an Ordinance declaring a moratorium on the conversion of multi-family apartment buildings to condominium ownership.

Mr. Newton stated that the issue which would be addressed by a Court if there is a challenge to such an action "would be whether the moratorium would constitute a taking and whether the regulation of condominiums has been preempted to the State". He stated that most common constitutional challenge to a moratorium is that "the delay in going forward with a project constitutes a temporary taking". In order to withstand a taking challenge, a regulation must substantially advance legitimate government interests and such regulation cannot deny an owner the economically viable use of his or her land.

He further states that with moratoria challenges, the Courts will often focus on three principal issues in addition to the traditional takings issues i.e.,

- the facts necessitating the moratorium,
- the duration of the moratorium, and
- the local government's process for curing the problem

He states that "prior to the adoption of a moratorium, a local government should determine what its goal for a cure will be and the steps the local government intends to take to reach that goal.....Without knowing what the cure is and how the local government intends to reach its goal, the local government cannot determine what would be a reasonable time for the moratorium".

The rapidly dwindling supply of affordable rental housing units is not a traditional land use issue. The conversion of apartment buildings to condominiums involves a change in ownership, not the use of the property. He states that "The case law is clear that local governments cannot enact arbitrary or unreasonable ordinances which place an undue restraint on the free alienability of property. The question before a Court would be whether an ordinance declaring a moratorium for a reasonable period of time to study potential solutions to the affordable housing crisis, would be considered a "taking" because it placed an undue restraint on the alienability of property".

Attorney Newton advised that there are no cases in Florida dealing with moratoria on the conversion of rental apartments to condominiums; however, there are cases from other jurisdictions regarding similar issues. He cited a case in New Orleans wherein they declared a moratorium in several historical areas of the City in order to study the effect of the conversions on the historical nature of the areas. The City ultimately adopted a zoning ordinance prohibiting time shares as a permitted use in historically designated zoning districts. The case did not address the time-frame of the moratorium.

The second issue is whether the legislature has preempted the field of condominium regulation. Florida Statute Chapter 718, Part VI, authorizes and regulates the conversion of existing properties to condominium ownership. SS 718.606 provides for certain extensions of time of rental agreements by the developer. "In addition to these time extensions, a County may adopt an ordinance providing for an additional extension of 90 days if the County determines that the rental housing vacancy rate is three (3) percent or less. He states that "such an ordinance shall be effective countywide unless a municipality votes to have the ordinance not apply within its boundaries".

On July 16, 1980, the County adopted such an Ordinance; however it is unlikely that the Ordinance is still valid given that it is over 25 years old, and the facts upon which it was based may be out of date. Mr. Newton advised that "If the Commission wished to take advantage of this provision in the Statute, an updated Ordinance with current data would have to be adopted". He further states that the "case law is clear that the legislature has not preempted the field of condominium regulation". He advised that there are no cases regarding whether a moratorium would be considered to be in conflict with the extension provisions authorized under FS Section 718.606.

He further states that, at a minimum, the proposed Ordinance should:

- clearly articulate the problem,
- state what the moratorium is intended to accomplish, and
- provide for a reasonable time-frame for the moratorium

Mr. Newton said the Ordinance must be adopted in the same manner as a Zoning Ordinance in compliance with the procedural requirements of Chapter 39 of the Broward County Code of Ordinances and FS Section 125.66. He cautioned that "there is still the possibility that the Courts may determine that the County cannot enact such a moratorium because it is either an unreasonable or arbitrary restriction on the free alienability of property, or that it is in conflict with the extension provisions authorized under Section 718.606".

I researched whether or not any like Ordinance has been adopted in Broward County; and, I discovered that on December 13, 2005, the City of Lauderdale Lakes adopted Ordinance 05-56, imposing a moratorium on the conversion of residential, commercial, and industrial property to Condo's. That Ordinance indicates that the "negative housing and economic impacts of condominium conversions require study by the City in order to adopt ways and means of providing a response to such negative impacts". The period of that moratorium is for one (1) year.

The Lauderdale Lakes Ordinance indicates that:

- it is increasingly difficult to obtain property insurance on older residential buildings
- the conversions may not be up to modern building codes leaving the owners at-risk
- lenders/insurance providers may tend to "red-line" the area to avoid payment for future damages from faulty plumbing, electrical, and structural conditions, etc.

I look forward to meeting with representatives from the City of Lauderdale Lakes, in order to determine how they intend to mitigate the impacts on their residents who would otherwise be displaced. I will keep the Town Administrator and the Town Council apprised of my findings. A copy of the Lauderdale Lakes Ordinance is attached for your review and perusal.

Thank you again for your sensitivity to this issue, and to the negative affects that these condo conversions are having on our Davie residents, who represent a significant of our workforce.

If you have any questions, please do not hesitate to call me at 797-1199.

Cc: Town Council Members
 Ken Cohen, Acting Town Administrator
 Russell Muniz, Town Clerk
 Monroe Kiar, Town Attorney.
 Mark Kutney, Development Services Director
 Bruce Dell, Planning & Zoning Manager

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